payment of the mortgage by Carson, or by the breach of trust committed by him in selling a portion of the property.

We agree with the judge of the Circuit Court, that there is no just ground for charging the appellees with laches in asserting their rights, and being of opinion for the reasons stated that the accounts C and D were properly ratified, the order of the Circuit Court is affirmed and the cause remanded.

United States Circuit Court. District of Virginia.

THE UNITED STATES *v.* THE PETERSBURG JUDGES OF ELECTION. THE SAME *v.* THE PETERSBURG REGISTRARS OF ELECTION.

An indictment charged that defendants unlawfully prevented, &c., from voting at a municipal election in Petersburg, certain legally registered voters qualified according to law. Another indictment charged that defendants refused to register certain legally qualified electors of African descent, as voters at the said election. On demurrer it was *held*, by BOND, Circuit J., that the indictments were sufficient, and that the motive of hostility to race, &c., might be inferred from the acts charged; by HUGHES, J., *contrà*, that the indictments were defective for not charging that the acts were done on account of race, color or previous condition of servitude, and that they should be quashed.

Per HUGHES, J. The 4th section of the Enforcement Act of May 31st 1870, is not founded on the Fifteenth Amendment and is unconstitutional.

Id. The Federal Courts have no jurisdiction to protect rights which accrue from the citizenship of a state, but only such as accrue from citizenship of the United States. The right to vote belongs to the former class. It is not a natural or inherent *right* but a *privilege* conferred or withheld by the several states in their own discretion. The only guarantee of the United States in this connection is under the Fifteenth Amendment, that no state shall deny or abridge the privilege on account of race, color or previous condition of servitude. The only case in which the Federal courts can entertain jurisdiction of any question upon this right is where a violation of this guarantee is alleged.

THE cases first named above were indictments against the judges who held the municipal election of Petersburg in 1874, respectively at eight precincts in that city. They charged that at a municipal election held there on the 2d May 1874, these defendants (respectively naming three at each precinct) did unlawfully prevent and obstruct from voting divers persons, to wit: A, B, &c., "citizens of the United States, twenty-one years old, residents of Virginia for more than twelve months, and of Petersburg for more than three months, resident and legally registered voters in said election, and otherwise qualified by law to vote at said election," at the said precincts respectively.

The second cases above named were indictments against the defendants for refusing to register as voters certain citizens, &c. See *postea*, p. 113.

The defendants demurred to the indictments on the grounds,

1. That there is no averment in any of the counts in the said indict-

ment that the acts of commission and omission charged as criminal in said indictment were done or omitted to be done because or on account of "race, color, or previous condition of servitude" of the persons whose rights are averred to have been denied, diminished, impaired, or obstructed, by the alleged acts of commission and omission of the defendants.

2. That the said acts and omissions are not averred to have been done under color or in execution of any state law or authority.

3. That the Act of Congress, or that part of it on which the said indictment is formed, is unconstitutional and void.

R. T. Daniel, for the demurrers.

L. L. Lewis, District Attorney, for the United States.

BOND, Circuit J., did not deliver a written opinion, but was in favor of overruling the demurrers, on the ground, that as the motives of men cannot be looked into or proved, except by their acts, it is sufficient to charge that citizens of the United States were prevented from voting, and that the motive of hostility to race may be inferred from the act of preventing a colored voter from voting.

HUGHES, District J.—If the election described, instead of being for municipal officers, had been for a member of Congress or presidential electors of the United States, these indictments, for reasons which need not here be set forth, would have been valid to give jurisdiction to this court, and would have been founded on those sections of the Enforcement Acts of Congress which expressly relate to national elections.

On the other hand, if the indictments had charged that the persons prevented from voting at this state election were persons of Saxon, Celtic, Mongol, African, or other descent, and that the defendants prevented them from voting on account of race, then, being founded upon those sections of the Enforcement Acts which were designed to enforce the Fifteenth Amendment of the National Constitution, they would have given jurisdiction to this court; because the Fifteenth Amendment expressly declares that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude."

The offence charged, however, is clearly not within either of these categories. If it had been, the jurisdiction of this court to try it would have been undeniable.

The indictments are really founded upon the 4th section of the Enforcement Act of May 31st 1870, which declares that "If any person, by force, bribery, threats, intimidation, or other unlawful means, shall hinder, delay, prevent or obstruct, * * * any citizen from doing any act required to be done to qualify him to vote, or from voting at any election [by the people in any state, territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision], such person shall for every such offence * * * be guilty of a misdemeanor, and shall, on conviction thereof, be fined, &c., or imprisoned, &c., or both, at the discretion of the court."

This section is clearly not founded upon the Fifteenth Amendment,

and, if constitutional at all, is so only by virtue of the clauses of the Fourteenth Amendment, which declare as follows: "All persons born and naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of *citizens of the United States*, * * * nor deny to any person the equal protection of the laws. Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

If this language of the Fourteenth Amendment, giving to Congress power to legislate for preventing the abridgment of the rights of citizens of the United States, were not qualified by another provision of that amendment, and were allowed its widest signification, then it is broad enough to cover the 4th section of the Enforcement Act of May 1870, which I have quoted, in the broadest signification of that section's language; and the national courts would have jurisdiction to try *any* offence abridging *any* right of *any* citizen of the United States on *any* account; and the indictments at bar would give jurisdiction to this court over the offences charged.

But is this language to be so interpreted? Is it not rather to be limited by construction? If the latter, then the language is to be construed according to rules of statutory interpretation, which are as much a part of the statutory law as the statutes themselves. Although, as will appear in the sequel, it is unnecessary for me to do so with reference to the eight indictments under immediate consideration, I shall first treat this clause of the Fourteenth Amendment as if it were not qualified by any other clause in that amendment, or by the Fifteenth Amendment.

It is a settled principle of construction that all instruments are to be interpreted according to their real intention and object; and when statutes employ general terms, those terms are to be limited in giving effect to the statutes, according to the real meaning of their authors, rather than according to their literal meaning, so as to correct the evil and advance the remedy contemplated by them. The illustration of this principle, which is most familiar to the legal profession, is that given by Blackstone, Book 1, p. 59. A law of Edward III. forbade all ecclesiastical persons to purchase *provisions* at Rome. If the term *provisions* had been given its widest meaning, it would have forbidden any of the English clergy who might happen to be at Rome from buying *food;* but the statute was construed with reference to its intention—which was to prohibit the purchasing of nominations by the Pope to ecclesiastical benefices in England, which at that day were called *provisions.*

It is a general principle that the language of statutes is, if possible, not to be so interpreted as to produce absurdity, or oppression, or evils greater than those designed to be remedied by them. Indeed, the very function and province of a court is to construe and apply the law according to its true meaning only, and for securing its real objects alone.

It is, therefore, perfectly competent for the national courts to discriminate between "the privileges and immunities of citizens of the United States," alluded to by the Fourteenth Amendment, and to limit the meaning of the acts of Congress passed to protect them (the fourth section of the first Enforcement Act among others), so as to make them

conform in practice to the spirit of the Constitution of the United States, which regards the National Government as one of limited, express powers, and the governments of the states as of general powers, not expressly enumerated. The authority of the courts to *enlarge* the powers of the National Government by construction has always encountered more or less disfavor. Their authority to *limit* those powers by construction has never been regarded with jealousy.

The only difficulty in thus discriminating lies in ascertaining the principle on which to proceed and the line of distinction to be drawn in regard to the privileges of the citizens of the United States intended to be protected. I flatter myself, however, that this difficulty can easily be surmounted in considering the questions raised upon the indictments before us.

The Supreme Court of the United States, in its decision in the *Slaughter-house Cases*, 16 Wallace 36, has taken a part of the responsibility of this task off of our hands. Those were cases in which the subject of complaint was an act of the legislature of Louisiana. That act created a joint stock company; empowered it to hold certain estate near the city of New Orleans; required that all animals which should be slaughtered within a large territory surrounding that city should be slaughtered upon the premises of this company; and gave it, in these and other respects, exclusive rights in abridgment of the like rights of other citizens, and especially of persons following the trade of butchering in the area described.

The United States Supreme Court held that the National courts had no jurisdiction to protect citizens of Louisiana, though they were citizens of the United States, in such privileges as were abridged in the act of incorporation complained of, passed by the legislature and approved by the Supreme Court of the state. In its decision in these cases, pronounced by Justice MILLER, the Supreme Court say, 16 Wallace 77, 78: "Was it the purpose of the Fourteenth Amendment, by the simple declaration that no state should make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, to transfer the security and protection of all the civil rights which we have mentioned from the states to the Federal Government? And where it is declared that Congress shall have power to enforce that article, was it intended to bring within the power of Congress the entire domain of civil rights heretofore belonging exclusively to the states?

"All this and more must follow if the proposition of the plaintiffs in error be sound. For, not only are these rights subject to the control of Congress whenever in its discretion any of them are supposed to be abridged by state legislation, but that body may also pass laws in advance, limiting and restricting the exercise of legislative powers by the states, in their most ordinary and usual functions, as in its judgment it may think proper, on all such subjects.

"And still further, such a construction, followed by the reversal of the judgment of the Supreme Court of Louisiana in these cases, would constitute this court a perpetual censor upon all legislation of the states on the civil rights of their own citizens, with authority to nullify such as it did not approve as consistent with those rights as they existed at the time of the adoption of this amendment. The argument, we admit,

is not always the most conclusive which is drawn from the consequences urged against the adoption of a particular construction of an instrument. But when, as in the case before us, these consequences are so serious, so far-reaching and pervading, so great a departure from the structure and spirit of our institutions; when the effect is to fetter and degrade the state governments by subjecting them to the control of Congress in the exercise of powers heretofore universally conceded to them, of the most ordinary and fundamental character; when, in fact, it radically changes the whole theory of the relations of the state and Federal governments to the people; the argument has a force that is irresistible, in the absence of language which expresses such a purpose too clearly to admit of doubt. We are convinced that no such results were intended by the Congress which proposed those amendments, nor by the legislatures of the states which ratified them."

This august court accordingly decided that it had no jurisdiction to protect the privileges which were abridged by the act of incorporation complained of, the privileges abridged being those which belong to citizens of the state as such, and distinguished from those which attached to them as citizens of the United States.

Its decision authorizes us to construe the clauses of the Fourteenth Amendment in question, and the Acts of Congress passed to enforce them, according to their direct historical object, rather than their mere literal meaning; and, more particularly, so to construe them as to discriminate between those rights of the citizen which he has as a citizen of a state and those which belong to him as a citizen of the United States.

In *Corfield* v. *Coryell*, 4 Wash. C. C. Reports 371, Justice WASHINGTON defined the privileges and immunities which belong to citizens of the states as such to be those which he called "fundamental;" such as "belong of right to citizens of all governments, and always belonged to citizens of the several states of this Union from the time of their independence." They embrace those rights which belong to a man as a member of society, together with those which the Constitution and laws of his state confer upon its citizens.

On the other hand, the rights which we have as citizens of the United States are such as are implied in the language of Judge TANEY, when he declared that "we are citizens of the United States for all the great purposes for which the Federal government was established." For instance, a man as a citizen of Virginia may carry on a business here by paying a certain tax; in virtue of which fact a citizen of Maryland, as a citizen of the United States, has a right to carry on the like business in Virginia by the payment of no greater tax. So, under the Constitution of the state, a man born in Virginia is a citizen here after a certain age; by virtue of which fact he may become, under the Constitution of the United States, a citizen of New York by a change of residence to that state. This parallel between the rights held by citizens, respectively, in their two characters, might be run out through many examples; but the distinction is too plain to need further illustration. For other decisions on the subject, see 9 Wheat. 203; 11 Pet. 102; 5 Wall. 471; 8 Id. 180; 9 Id. 41; and 12 Id. 430.

Adopting this broad distinction, and availing of the authority given by the Supreme Court in its decision in the *Slaughter-house Cases*, the

national courts are justified in refusing to take cognisance of offences committed in violation of those rights which belong to a person as the citizen of a state not created or conferred, but only guaranteed by the National Constitution; and in confining their jurisdiction to those rights which belong to persons peculiarly in their character as citizens of the United States.

This much being settled, and inasmuch as the fourth section of the enforcement of May, 1870, concerns only the citizen's right of voting, it is only necessary to inquire how the right of voting attaches to the citizen; whether in his character as a citizen of the state or in that of a citizen of the United States.

Before the adoption of the Fourteenth Amendment a man was a citizen of the United States only derivatively, by virtue of his being a citizen of a state. Such was the principle of the decision of the Supreme Court of the United States in the case of *Dred Scott* v. *Sanford*, 19 Howard 393, in which that court expressly decided that as a man of African descent was not the citizen of any state, therefore he could not be a citizen of the United States. By the adoption of the Fourteenth Amendment, the new *status* of citizenship of the United States, independently of that of citizenship of the state, was first established; but it does not follow that the incorporation of this new provision into our national polity has abolished or obliterated the line of distinction which the national courts had claimed the power to draw between the rights of a person as citizen of a state and those which he had as citizen of the United States. There is not yet any general act of Congress clothing the citizen of the United States *proprio vigore* with all the rights of the citizen of the state where he resides, and giving the national courts express jurisdiction to protect those rights.

Certainly there can be no law of Congress found which directly purports to constitute any citizen of the United States a voter in the state in which he resides. Indeed, such a law would seem to be unconstitutional; for the Fourteenth Amendment itself contains a clause which leaves to the states the power, always before possessed by and conceded to them, of prohibiting citizens of the United States from voting, and of declaring who shall be voters, even in national elections. That amendment, in the second paragraph, provides that "when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is *denied to any of the male inhabitants of such state*, being twenty-one years old, and *citizens of the United States*, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens bears to the whole number of male citizens twenty-one years of age in such state." Thus the right to vote, even of citizens of the United States, is left, even by the Fourteenth Amendment itself, to be regulated and defined by the states, which had always held that power. The state of Virginia has accordingly exercised this prerogative, pursuant to her own uncontrolled views of justice and propriety, in the first clause of the third article of her state constitution, which is in these words: "Every male citizen of the United States twenty-one years old who shall have been a resident of this state twelve months,

and of the county, city, or town in which he shall offer to vote three months next preceding any election, shall be entitled to vote upon all questions submitted to the people at such election;" following this general provision with the usual exceptions of persons committing crime, &c.

And here I will remark that the right to vote would seem to be not *fundamental;* not a natural right. The power to declare who shall be voters, who shall be constituents of the political sovereignty of a state, has been claimed by and conceded to each state from the beginning of our independence; and is expressly conceded by the clause of the Fourteenth Amendment which I last quoted. The right to vote would seem to be not an inherent *right*, but a conferred *privilege*; a privilege not derived from the United States, but from the state alone; a privilege belonging to the man as a citizen of the state, and not to him in his character as citizen of the United States. The noble liberality of Virginia in making every citizen of the United States resident within her borders a voter in every election, does not in any degree change the fact that he derives this right *from herself.* Nor does the obligation of the United States to guarantee to the states a republican form of government change the *fact* now existing, and which has existed from the founding of the Union, that to the states is left the power of defining and regulating the right of suffrage—a power without which a state could scarcely be considered as any longer retaining its autonomy.

It being, therefore, incontrovertible that the right to vote in a state election belongs to a man as the citizen of his state, it remains to ask what right connected with voting belongs to him as a citizen of the United States. Under the Fifteenth Amendment his right as a national citizen is—*not to be prevented from voting "on account of race, color, or previous condition of servitude;"* which is a right not involved in the indictments at bar. Has he any similar right in his national character under the Fourteenth Amendment? Whatever right the national citizen, as such, may have, under the general terms of the Fourteenth Amendment, *not to be abridged in his privileges or immunities*, so far as other privileges are concerned, yet that amendment gives him no such right as to the privilege of voting, because it expressly leaves to the states the power of regulating the right of suffrage in both state and national elections. It is therefore plain that not only is the right to vote derived from the state, and not only does it belong to the category of rights which it is peculiarly within the province of the state tribunals to protect, but it is excepted by the Fourteenth Amendment from those general privileges and immunities of citizens of the United States which the states are forbidden to abridge. It is indeed a right which the states are expressly allowed to abridge in every other respect than on account of race, color, and previous servitude.

If the Constitution gives this permission to the states, then no Act of Congress forbidding the abridgment of this right on other account than of race, color, &c., is constitutional, and no indictment founded upon such a law is valid to give jurisdiction of the offence charged to the national courts.

It is contended that from whatever source a right comes to a citizen of the United States, yet, once attaching to him, it is competent for Congress and the United States courts to protect him in it. This argu-

ment would confer the power and duty of protecting the citizen of the United States from any of the ordinary offences at common law, such as murder, false imprisonment, and the like. This cannot be a sound proposition. There is an obvious distinction to be made on this subject.

Although still unnecessary to my argument as to the eight indictments mentioned, I will advert to the distinction which should be drawn between rights proper and those improper for the jurisdiction of the national courts. It is that so well stated by Justice BRADLEY in his opinion in the case of the *United States* vs. *Cruikshank et als.*, reported in 13 American Law Register 630, where the learned justice distinguishes between those provisions of the National Constitution which guarantee fundamental rights, the duty of protecting which properly belongs to the states, and those provisions which either create rights or enjoin affirmative legislation upon Congress for their protection.

I cannot but express a cordial and full concurrence in the following remarks of Justice BRADLEY on that subject. He says:

"With regard to those acknowledged rights and privileges of the citizen which form a part of his political inheritance derived from the mother country, and which were challenged and vindicated by centuries of stubborn resistance to arbitrary power, they belong to him as his birthright, and it is the duty of the particular state of which he is a citizen to protect and enforce them, and to do nought to deprive him of their full enjoyment.

"When any of these rights and privileges are secured by the Constitution of the United States only by a declaration that the state, or the United States, shall not violate or abridge them, it is at once understood that they are not created or conferred by the Constitution, but that the Constitution only guarantees that they shall not be impaired by the state, or the United States, as the case may be.

"The fulfilment by the United States of this guaranty is the only duty with which that government is charged.

"The affirmative enforcement of the rights and privileges themselves, unless something more is expressed, does not devolve upon it, but belongs to the state government as a part of its residuary sovereignty."

If this distinction be correct, then, as the right of voting is not conferred by the National Constitution, nor even guaranteed by that instrument, except in a qualified and negative way by the Fifteenth Amendment, it is not one of those rights over which, when proposed to be exercised in a state election, Congress or the national courts have jurisdiction.

Thus are we brought by legitimate argument, founded upon the decision in the *Slaughter-house Cases*, and the very able one in the *Cruikshank Case*, to a conclusion against the validity of the eight indictments pending against the judges of election of Petersburg.

But there is a much more direct method of reaching the same conclusion, which avoids a resort to the power of construction, and which renders useless the distinction drawn by the national courts in the cases alluded to between the rights belonging to a person respectively in his two characters of citizen of the state and citizen of the United States, and between the rights created or conferred and those merely guaranteed by the National Constitution. It is this:

Admit for argument's sake that the Fourteenth Amendment, in its

first paragraph, was intended to prohibit the abridgment of any privilege of the citizen by the state, or by its citizens, on any account whatever; yet the second paragraph of the same amendment, which leaves to the states the power always held by them to prescribe the qualifications for suffrage at their pleasure in national and state elections, expressly excepts the right of voting from those general privileges; and the most that can be insisted upon is that the Fourteenth Amendment protects the citizen of the United States in all privileges except the right of voting, and leaves this right to be regulated *ad libitum* by the states. It was this latter fact which created the necessity for the Fifteenth Amendment, and that amendment would mean nothing, and would have been wholly unnecessary if before its adoption the states had not had uncontrolled power over the right of suffrage. Its sole object was to limit the unrestrained power of the state over this right which had been conceded by the Fourteenth Amendment; but it undertook to limit the power only in one respect. It declared in substance that notwithstanding the states possessed uncontrolled power over this right they should be restricted in exercising their power at least this far, to wit: They should not deny or abridge the right of the citizen to vote "on account of race, color, or previous condition of servitude."

I am, therefore, of opinion that any law of Congress is unconstitutional which makes the preventing of a voter from voting in a state election penal on any other account than of race, color, or previous condition of servitude; and that any indictment charging such an offence, though founded upon such a law or section of a law of Congress, is invalid to give jurisdiction of such an offence to this court. I think, consequently, that the demurrers of the defendants to the eight indictments against the Petersburg judges of election are good, and that the indictments should be quashed.

II. The three indictments pending against certain registrars of election in Petersburg differ in two respects as to the questions which I have been considering, from those pending against the judges of election.

1. They allege that the persons who were prevented from registering were of African descent, but omit to charge that they were prevented from registering "on account of race, color, or previous condition of servitude." These are not indictments, therefore, founded upon the Fifteenth Amendment or any Act of Congress passed for enforcing it. We are not at liberty to infer from the mere circumstance that a man was of any particular race, and prevented from exercising a right, that he was so prevented on account of his race. That fact must be charged before it can be proved, and the failure to charge it is, I think, fatal to these indictments, so far as the Fifteenth Amendment and the statutes enforcing it are concerned.

2. These three indictments each charge in substance that the defendant "did refuse and knowingly omit to give to all citizens of the United States in his ward the same and equal opportunity, without distinction of race, color, or previous condition of servitude, to register, &c.; but, to the contrary thereof, refused and knowingly omitted to give A, B, C, D and E the opportunity to register which he gave to others, the said A, B, C, D and E being qualified, &c., and citizens of the United States of "African race and descent." By not charging that the refusal was on account of the race, &c., of the injured

persons, these indictments, for the reasons I have stated, do not come under the Fifteenth Amendment. If they are valid at all, to give jurisdiction to this court it must be under the Fourteenth Amendment and the 4th section of the Act of May 1870. But, for reasons already abundantly stated, registration is a right conferred by the state. Each of the three indictments under immediate consideration expressly recites that the right is conferred by the laws of Virginia, and that the duties of the registrar were duties imposed by state laws. Nor do they charge that in consequence of the failure of the injured persons named to be admitted to registration they lost their right to vote either at a state election or an election held for officers of the United States. The denial merely of registration is an offence against the state, if it be on any other account than of race, color, &c. If the indictments had charged that the denial had been on account of race, &c., the offence would have been cognisable here; or if, after charging the denial, the indictments had gone on to charge that in consequence thereof the citizen of the United States was prevented from voting at an election held for a member of Congress, or electors of a President of the United States, I am inclined to think that the offence would have been cognisable here. But a charge merely that a citizen of the United States was denied registration, without other allegation to make it appear that some right was abridged which belonged to the man as a citizen of the United States, is not sufficient to give cognisance of the offence to this court.

I am, therefore, of opinion that the demurrers to these indictments against the Petersburg registrars ought to be sustained, and that the latter ought to be quashed.

The judges being divided in opinion, the case will be certified to the Supreme Court of the United States.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME JUDICIAL COURT OF NEW HAMPSHIRE.[2]

SUPREME COURT OF NEW JERSEY.[3]

SUPREME COURT OF OHIO.[4]

SUPREME COURT OF PENNSYLVANIA.[5]

ARBITRATION AND AWARD.

Revocation—Jurisdiction of Courts.—It was agreed to submit all matters in a pending suit to referees under the Act of June 16th 1836, that the submission should be made a rule of court, and be binding "without appeal, exception or writ of error." *Held*, that the award was

[1] From J. W. Wallace, Esq., Reporter; to appear in vol. 20 of his Reports.

[2] From J. M. Shirley, Esq., Reporter; to appear in 53 N. H. Reports.

[3] From G. D. W. Vroom, Esq., Reporter; to appear in vol. 8 of his Reports.

[4] From Hon. M. M. Granger, Reporter; to appear in 24 Ohio St. Reports.

[5] From P. F. Smith, Esq., Reporter; to appear in 75 Pa. State Reports.